

**REMARKS**

Claims 1-21 are pending in the application. Claims 1-21 are subject to a restriction requirement.

Claims 1-4 are rejected. Claims 5-12 are objected to.

Claims 2, 4 and 8 are cancelled. Claims 1, 3, 5-7 and 9-12 have been amended for clarity. Claim 1 has been further amended to incorporate the limitation of former claim 4, as well the first range listed in claim 3. Support for the "modified" amendment to claim 1 is found at p. 2, ¶0026 of the Specification. Accordingly, no new matter is added by these amendments.

**Election / Restriction**

The Examiner has restricted Claims 1-21 to one of the following two inventions –

- I. Claims 1-12, drawn to an additive.
- II. Claim 13-21, drawn to a hydraulically setting mixture containing the additive of Group I.

Applicants hereby affirm election with traverse the invention of Group I, claims 1-12.

Claim 1 is directed towards "Additive for hydraulically setting systems. . ." and claim 13 is directed towards "Hydraulically setting mixture. . ." It appears from the Examiner's remarks at p. 2, paragraph 2 of the present Office Action that the Restriction is based on failure to meet a single inventive concept under PCT Rules 13.1 and 13.2. The present application is the national stage application of International Application No. PCT/EP03/06132. PCT Rules 13.1 and 13.2 apply to the prosecution of the international application, not the national stage application. The International Preliminary Examination Report ("IPER"), mailed out 8 May 2008, found no lack of unity of invention. (A copy is enclosed herewith for the Examiner's consideration.) Further, that report found the present invention to be both novel and inventive. Accordingly, the Examiner's restriction of the claims based on international rules of prosecution, particularly in light of the IPER, is improper.

Should the Examiner maintain his restriction requirement, then Applicants withdraw claims 13-21 under traverse as being directed towards a non-elected invention, subject to Applicant's right to rejoin in the present application or refile in a divisional application.

**Reply to the objection of claims 5-12**

Claims 5-12 are objected to as being in improper form in that they are multiple dependent claims that depend from other multiple dependent claims. Claims 5, 6 and 8-12 have been amended to remove their multiple dependencies. It is believed that these amendments overcome the Examiner's objections to claims 5-12. Withdrawal, therefore, of the objection is respectfully requested.

**Reply to the rejection of claims 1-4 under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph**

Claims 1-4 are rejected as being indefinite for a variety of reasons.

Regarding claim 1, the term "cellulose-like compound" has been deleted.

Regarding the broad and narrow ranges within the same claims, claims 1, 3, 5, 8 and 12 have been amended to eliminate those multiple ranges within one claim to only one range for clarity.

It is believed that these amendments overcome the Examiner's rejection of claims 1-4 as being indefinite. Withdrawal, therefore, of the rejection of claims 1-4 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph is respectfully requested.

**Reply to the rejection of claims 1-4 under 35 U.S.C. § 102(b) or § 103(a)**

Claims 1-4 are rejected as being anticipated by, or alternatively, unpatentable over U.S. Patent No. 6,054,022 to Helwig *et al.* ("Helwig"). For the following reasons, Applicants respectfully traverse the Examiner's rejection of claims 1-4 as being anticipated by, or alternatively, unpatentable over Helwig.

Helwig teaches a method for forming a wet-laid nonwoven glass fiber mat comprised of a plurality of bundles of fiber (Abstract). This method includes the steps of adding chopped glass fibers to an aqueous slurry containing a surfactant and a viscosity modifier (col. 2, lines 23-29). The viscosity modifier is preferably hydroxyethyl cellulose present in an amount of about 2000 ppm (col. 2, lines 34-36). The method may optionally include the step of adding a complexing agent for tying up the surfactant in the slurry, thus aiding in fiber bundle formation (col. 2, lines 52-55). Preferably the complexing agent is a polycarboxylate salt added in an amount of about

20 to about 100 ppm (col. 2, lines 55-57). The complexing agent aides in dispersing the fibers to form fiber strings as opposed to fiber bundles (see Examples 2 and 3).

In contrast to Helwig, the present invention is directed towards additives for hydraulically setting systems. These additives comprises both (a) a water soluble cellulose ether and/or guar ether and (b) a modified polycarboxylate whose main chain is linked via ester, ether, imide and/or amide groups with polyethylene oxide-containing side chains. The water soluble ether and modified polycarboxylate are present in the additive in an amount of approximately 0.05 to 1.5 parts by weight water-soluble ether for approximately 1 part by weight modified polycarboxylate. Helwig does not teach or suggest the modified polycarboxylate of the present invention. Further, Helwig does not teach or suggest a water soluble ether and polycarboxylate in the presently claimed ratio. Finally, as Helwig is directed towards a completely different technical field, one skilled in the art would not look to the separate viscosity modifier and complexing agent ingredients used in forming glass fiber mats according to the method of Helwig for forming a single additive for use in a hydraulically setting system.

With respect to viscosity, Example 1 of Helwig states that "the viscosity [of the aqueous mixture] was maintained in the range of 8.0 to 8.5 cps" by periodic addition of the viscosity modifier. Accordingly, one skilled in the art is provided with no motivation to seek a water soluble cellulose ether and/or guar ether with a viscosity of at least approximately 20,000 mPas.

For at least these reasons, Helwig does not anticipate, or alternatively, render unpatentable the presently claimed invention. Withdrawal, therefore, of the rejection of claims 1-4 under 35 U.S.C. § 102(b), or alternatively, § 103(a) is respectfully requested.

**Reply to the rejection of claims 1-4 under 35 U.S.C. § 102(e) or § 103(a)**

Claims 1-4 are rejected as being anticipated by, or alternatively, unpatentable over U.S. Patent No. 6,465,412 to Mahieu *et al.* ("Mahieu"). For the following reasons, Applicants respectfully traverse the Examiner's rejection of claims 1-4 as being anticipated by, or alternatively, unpatentable over Mahieu.

Mahieu teaches an antibacterial cleaning composition containing at least a surfactant, excluding cationic surfactants, a polyethylene oxide polycarboxylic acid copolymer and water (Abstract). The surfactant can be an alkyl polysaccharide surfactant having a hydrophobic group

containing from 8 to 20 carbon atoms and a polysaccharide hydrophilic group containing from 1.5 to about 10 saccharide units (col. 7, line 7 – col. 8, line 53). These polysaccharide surfactants are smaller molecule carbohydrates than the claimed celluloses and gums of the present invention (see, *e.g.*, col. 7, line 64 and col. 8, line 45). Further, Mahieu teaches that preferred saccharide surfactants have a viscosity of 3,000 to 7,000 cps (col. 8, lines 52-53).

Mahieu does not teach or suggest the water-soluble cellulose ether and/or guar ether of the present invention. Further, Mahieu does not teach or suggest a water soluble ether and polycarboxylate in the presently claimed ratio. Finally, as Mahieu is directed towards a completely different technical field, one skilled in the art would not look to the separate alkyl polysaccharide surfactant and polyethylene oxide polycarboxylic acid copolymer ingredients in the antimicrobial scale cleansing composition of Mahieu for forming a single additive for use in a hydraulically setting system

For at least these reasons, withdrawal of the rejection of claims 1-4 under 35 U.S.C. § 102(b), or alternatively, § 103(a) is respectfully requested.

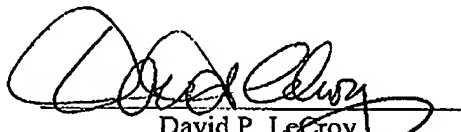
It is believed that the above remarks and amendments place the application in condition for allowance, and such allowance is respectfully requested.

Respectfully submitted,

Dated:

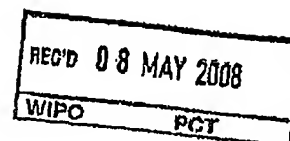
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## PATENT COOPERATION TREATY

## PCT



## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)


(Rationalised Report according to the Notice of the President of the EPO published in the OJ11/2001)

|  |   |   |
|--|---|---|
| Applicant's or agent's file reference<br><b>1320/15-PCT</b>                                      | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |   |
| International application No.<br><b>PCT/EP03/06132</b>   | International filing date (day/month/year)<br><b>11/06/2003</b>   | Priority date (day/month/year)<br><b>12/06/2002</b> |
| International Patent Classification (IPC) or national classification and IPC<br><b>CO4B28/02</b> |   |   |
| Applicant<br><b>ELOTEX AG et al.</b>   |   |   |

- This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
- This REPORT consists of a total of 2 sheets, including this cover sheet.  
☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consists of a total of \_\_\_\_\_ sheets.

- This report contains indications relating to the following items:
  - ☒ Basis of the report
  - ☐ Priority
  - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
  - ☐ Lack of unity of invention
  - ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
  - ☐ Certain documents cited
  - ☐ Certain defects in the international application
  - ☐ Certain observations on the international application

|   |   |
|---|---|
| Date of submission of the demand<br><b>07/11/2003</b>   | Date of completion of this report<br><b>08/01/2004</b>                  |
| Name and mailing address of the IPEA/<br> European Patent Office<br>D-80298 Munich<br>Tel. (+49-89) 2399-0, Tx: 523656 epmu d<br>Fax: (+49-89) 2399-4465 | Authorized officer<br><b>LO CONTE C.</b><br><br>Tel. (+49-89) 2399 2828 |

Form PCT/IPEA/409 (cover sheet) P20476 (October 2002)



**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. PCT/EP03/06132

**I. Basis of the report**

The basis of this international preliminary examination is the application as originally filed.

**V. Reasoned statement under Rule 66.2(a)(II) with regard to novelty, inventive step or industrial applicability**

In light of the documents cited in the international search report, it is considered that the invention as defined in the claims meets the criteria mentioned in Article 33 (1) PCT, i.e. it appears to be novel, to involve an inventive step and to be industrially applicable.

Form PCT/409PE1 (EPO-03-2002) P20755